



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION VII  
726 MINNESOTA AVENUE  
KANSAS CITY, KANSAS 66101

**VIA CERTIFIED MAIL**  
**RETURN RECEIPT REQUESTED**

December 20, 1996

Mr. John Mallonnee  
719 N. Garfield  
Chanute, Kansas 66720

Re: MARCO Superfund Site  
Intersection of Hickory and North Santa Fe  
Chanute, Kansas

RCRA File Copy  
Document # \_\_\_\_\_

RECEIVED

DEC 26 1996

RCRA PERMITTING & COMPLIANCE BRANCH  
(RPCB)

422936



RCRA RECORDS

Dear Mr. Mallonnee,

This letter is a follow-up to the telephone conversation that you and I have had concerning the work you are doing at the MARCO Superfund Site in Chanute, Kansas. As we discussed, EPA believes it is imperative that you cease all activities at the MARCO Superfund Site, in Chanute, Kansas related to the dismantling of pipes and tanks. As we discussed on the phone last Friday, December 13, 1996, EPA and the Kansas Department of Health and Environment, ("KDHE") are concerned that flammable and explosive materials in the tanks and pipes at the MARCO refinery may ignite or explode if sparked by tank or pipe dismantling activities. A fire or explosion at the MARCO refinery could have very serious consequences.

EPA has notified the owners of the property, the Robert Cooley Trust, Mr. Bob Moore, Trustee for the Robert Cooley Trust, and Mr. Bob Moore, personally, ( hereafter, "Respondents"), of the need to immediately cease current site activities related to the dismantling of tanks and pipes. On October 28, 1996, EPA issued a Unilateral Administrative Order, ("UAO"), pursuant to Section 7003 of the Resource Conservation and Recovery Act, ("RCRA"), 42 U.S.C. 6973, to Respondents requiring them to cease their current activities at the Site related to the dismantling of tanks and piping, and requiring them to install a fence around the Site, inventory all tanks and piping and prepare a plan for EPA approval to safely dismantle all existing tanks and exposed piping at the Site. EPA took this measure only after determining that there may be an imminent and substantial endangerment to human health and the environment because of the release and discharges, or threatened release and discharges, of oil and hazardous and/or solid wastes from the Site.

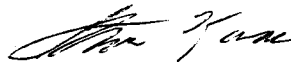
The UAO issued to Site owners and operators is binding on anyone who works for or is in contract with Respondents. Paragraph 34 of the UAO provides, "this Order shall apply to and be binding upon Respondents, their agents, successors, and assigns." As such, you are hereby provided notice that EPA has found your actions at the site relative to tank and pipe dismantling to pose an imminent and substantial endangerment to human health and the environment. As

such, you must cease those activities immediately. EPA is providing you a copy of the UAO for your information.

EPA understands that you may be salvaging wood or other materials from the Site. To the extent that those activities do not involve the use of blow torches, cutting equipment or other activities which may cause spills, a fire, or an explosion, you may continue those operations. Please be advised, however, that there may be asbestos containing materials at the Site and there are specific state and federal regulations which govern the manner in which asbestos containing material is to be handled. The federal regulations governing the removal of asbestos occur at 40 C.F.R. Section 61.145(c) and 40 C.F.R. Section 61.150, 151 and 154. There are state regulations that will also impact any work you do at the Site. For further information on those, please contact the local KDHE office in Chanute at (316) 431-2390. Failure to comply with regulations governing the removal of asbestos containing materials may subject you to civil or criminal penalties.

If you have any questions, please feel free to call Ilene Munk in the Office of Regional Counsel at (913) 551-7807 or me at (913) 551- 7698.

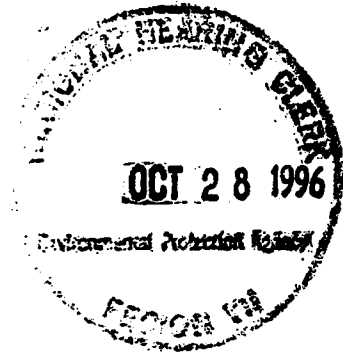
Sincerely,

A handwritten signature in black ink, appearing to read "Steve Kovac", is written over a horizontal line.

Steve Kovac  
Superfund Branch Chief

Enclosure

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION VII  
726 MINNESOTA AVENUE  
KANSAS CITY, KANSAS 66101



IN THE MATTER OF:

THE MID-AMERICA REFINERY COMPANY;

Robert Cooley Trust,

Mr. Bob Moore, Trustee for the  
Robert Cooley Trust,

and

Mr. Bob Moore, individually,

Respondents.

Proceedings under Section 7003 of the  
Resource Conservation and Recovery  
Act as amended, 42 U.S.C. Section 6973)

Docket No. VII-97-H-0001

**ADMINISTRATIVE ORDER**

**I. PRELIMINARY STATEMENT**

1. This Administrative Order ("Order") is issued to the Robert Cooley Trust, Mr. Bob Moore, Trustee for the Robert Cooley Trust, and Mr. Bob Moore, individually ("Respondents") pursuant to the authority vested in the Administrator of the United States Environmental Protection Agency ("EPA") by Section 7003(a) of the Solid Waste Disposal Act of 1976, commonly referred to as the Resource Conservation and Recovery Act, as amended by the Hazardous and Solid Waste Amendments of 1984 (hereinafter referred to as "RCRA"), 42 U.S.C. § 6973(a). The authorities vested in the Administrator pursuant to RCRA have been further delegated to the EPA Regional Administrators by EPA Delegation

Nos. 8-22-A, dated March 20, 1985 and 8-22-B, dated March 20, 1985.

## II. STATEMENT OF PURPOSE

2. This Order concerns the Mid-America Petroleum Refinery Company (MARCO) facility, in Chanute, Kansas (hereinafter referred to as the "Site"). The Order requires Respondents to (i) cease their current activities at the Site related to the dismantling of tanks and piping, until such time as EPA has approved a plan for the safe removal of tanks and piping from the Site; (ii) control access to the Site by installing a fence surrounding the Site; (iii) inventory all tanks and exposed piping currently at the Site; and (iv) develop a plan, for EPA approval, to safely dismantle and remove all existing tanks and exposed piping at the Site. The Regional Administrator has determined that there may be an imminent and substantial endangerment to the public health, welfare or the environment because of the release and discharges, or threatened release and discharges, of oil and hazardous and/or solid wastes and/or hazardous substances from the Site.

## III. FINDINGS OF FACT

3. The Site is located just outside the city limits on the north edge of Chanute, Kansas, northwest of the intersection of West Hickory Street and North Santa Fe Avenue. The Site lies within the NE 1/4 of the SE 1/4 of Section 17, Township 27N Range 18E. The Site comprises approximately 24.3 acres of land.

4. The owner of record of the Site is the Robert Cooley Trust. Mr. Bob Moore is trustee of the Robert Cooley Trust. According to Neosho County records, the Robert Cooley Trust purchased the Site in May of 1993.

5. Residential property lies immediately to the south and west of the MARCO site, and commercial property lies to the north and east. Approximately ten residences and seven businesses are located within 200 feet of the Site.

6. Most of the Site is fenced; however, no fencing exists along the portions of the western boundary of the Site, and a substantial portion of the existing fencing is broken or is otherwise inadequate to prevent access to the Site by children playing in the area, other trespassers, and vandals.

7. MARCO operated as a crude oil processor from 1934 until it ceased operating in February 1981. The Site has remained relatively inactive since 1981. A large amount of steel remains on the Site, in the form of various-sized tanks and piping.

8. The Kansas Department of Health and Environment (KDHE) conducted a preliminary assessment/site investigation (PA/SI) of the Site in 1986. The PA visually identified several areas of contaminated soil resulting from leaking tanks and pipes. The results of the SI confirmed the presence of soil contamination in several areas throughout the Site. Analysis of several of these areas indicated that the soils were saturated with petroleum.

9. The SI also found that contaminants are being carried off-site by surface water runoff. Surface drainage from the Site

flows into an ephemeral tributary, which empties into the east-west trending Village Creek, which is part of the Neosho River Basin. The Neosho River is the primary source of drinking water for the City of Chanute.

10. In conjunction with the SI, a tank evaluation survey was conducted by the KDHE in 1986. The purpose of the survey was to determine each of the tanks' former use, construction type, present condition, and diking. At that time, approximately 40 percent of the tanks were inadequately diked. Many of the tanks contained bottom sludges, sediments, weathered petroleum, and water. Many tanks showed evidence of rust and metal fatigue, and some were open to the environment. Stained soil areas adjacent to some tanks provided visible evidence of tank leaks.

11. Since the Robert Cooley Trust purchased the Site, Mr. Bob Moore and/or the Robert Cooley Trust has engaged in, or hired contractors to perform the dismantling and salvage of tanks and piping. Acetylene cutting torches are being used at the Site to dismantle the steel tanks and piping.

12. The use of cutting torches to salvage steel from tanks and piping has repeatedly started fires at the Site. According to the fire department's records, responses to fires at the Site by the Chanute Fire Department include the following:

On August 23, 1995, for a "small fire in [a] tank being cut";

On August 29, 1995, for a "small fire from cutting pipes containing gasoline";

On April 9, 1996, for a "fire while using a cutting torch inside a building";

On April 19, 1996, for a fire started "while cutting metal caught grass and other debris";

On June 2, 1996, "workers ignited the sludge in the bottom of a storage tank while cutting the tank with a torch";

On June 14, 1996, workers "ignited products in piping while cutting the pipes with torches";

On August 7, 1996, because "while cutting pipes oil [that] spilled on the ground was ignited by cutting torches"; and

On August 28, 1996, because "workers ignited the sludge in the bottom of a storage tank while cutting the tank with a torch."

13. Fires continue to occur at the Site. As recently as October 15, 1996, KDHE received a report that a spill of approximately 50 gallons of oil had "drained across [a] road [and] caught on fire," which caught a tank on fire. Residents three miles north of the Site complained about smoke from the fire.

14. An unknown number of tanks remain at the Site. The contents of the remaining tanks vary, with many containing flammable and/or explosive vapors, petroleum wastes and residues, and sludge.

15. Salvage operations at the Site are ongoing, and the use of acetylene cutting torches at the Site continues.

16. During the time that the Robert Cooley Trust has owned the Site, a number of oil spills have occurred, releasing varying amounts (from 20 to 2500 gallons) of petroleum and petroleum residues to the environment. Spill reports taken by the KDHE show the following:

On May 21, 1993, approximately 20 gallons of oil spilled at the Site;

On May 26, 1993, approximately 2500 gallons of oil spilled at the Site; and

On October 15, 1996, approximately 50 gallons of oil spilled at the Site.

17. EPA conducted an inspection of the Site in October 1996. EPA found that the entire Site is in deteriorating condition. Erosion in many areas of the Site has uncovered underground pipes. EPA inspectors found piles of bricks and other building debris, trash, and a number of metal drums. Some of the drums were partially full to full of a black hardened substance, others contained petroleum wastes and other fluids. Many of the tanks scattered throughout the Site remain open to the environment, with stained areas of soil adjacent to some of the tanks showing evidence of recent leaks. Many tanks are rusted and show areas of metal fatigue. Many of the bermed areas enclosing large tanks are partially full of oily water. EPA also



found evidence that vandals and others have trespassed at the Site.

18. Oil, including petroleum and its constituents (e.g., benzene, ethylbenzene, toluene, and xylene) poses a threat to human health and the environment. Human health and environmental impacts from exposure at certain concentrations and for certain durations for some of the constituents of oil are specified below:

Petroleum contains aliphatic hydrocarbons, paraffins, tars, and aromatic hydrocarbon compounds. The health effects associated with petroleum are those of its associated hydrocarbon mixtures. The aliphatic hydrocarbons are less toxic than the aromatic hydrocarbons, such as the benzene-related compounds (benzene, ethylbenzene, toluene, and xylene). Among the aromatic compounds also are a group known as the Polycyclic Aromatic Hydrocarbons (PAHs), which may cause skin and eye irritation. Some, such as benzo(a)pyrene, are carcinogenic. Dermatitis, eye irritation, liver and kidney damage, central nervous system effects, hematopoietic effects, and carcinogenic effects are generally associated with the aromatic constituents of petroleum.

Benzene has numerous adverse health effects, including cancer, leukemia, aplastic anemia, chromosomal damage, blood-forming cell decrease, embryonic death, arrhythmia, and nausea.

Ethylbenzene causes adverse reproductive effects, and is a skin and eye irritant at high concentrations.

**Toluene** can cause decreased fetal weight and embryonic death. Acute exposure may produce central nervous system depression, narcosis and cerebellar degeneration.

**Xylene** affects the central nervous system and irritates mucous membranes at high concentrations.

19. Multiple threats are posed to human health and the environment from petroleum-based fires at the Site. Some of fires' more obvious hazards result from the intense heat, open flame and smoke inhalation. Fires can also mobilize and release a number of toxic compounds, which threaten both on-site personnel and persons living or working nearby. Some of the Site tanks contain explosive vapors; an explosion could be disastrous given the proximity of residences and businesses to the Site.

#### IV. CONCLUSIONS OF LAW AND DETERMINATIONS

20. Respondents are "persons" as defined in Section 1004(15) of RCRA, 42 U.S.C. § 6903(15).

21. Oil is a "solid waste" as defined in Section 1004(27) of RCRA, 42 U.S.C. § 6903(27).

22. The presence of solid wastes, hazardous wastes, hazardous constituents and/or hazardous substances in the soil, groundwater and surface water at the Site resulted from the past or present handling, storage, treatment, transportation, and/or disposal of solid wastes, hazardous wastes, hazardous constituents and/or hazardous substances at the Site.

23. Present conditions at the Site may constitute an imminent and substantial endangerment to health or the environment, within the meaning of Section 7003 of RCRA, 42 U.S.C. § 6973.

24. Respondents have been, and currently are, contributing to such handling, storage, treatment, transportation and/or disposal of solid wastes, hazardous wastes and/or hazardous constituents at the Site.

#### V. NOTICE TO THE STATE

25. Pursuant to Section 7003 of RCRA, 42 U.S.C. § 6973, EPA has notified the State of Kansas of the issuance of this Order.

#### VI. ORDER

26. Based on the foregoing, Respondents are hereby ordered to perform the activities described in Section VII of this Order and all other activities required by this Order. Respondents are further ordered to comply with all of the provisions of this Order, all documents incorporated by reference into this Order, and all schedules and deadlines in this Order, attached to this Order, or incorporated by reference into this Order.

#### VII. WORK TO BE PERFORMED

27. Current Site Activities: Respondents shall cease all work on tanks and piping currently underway at the Site, until such time as EPA has approved the work plan for tank and piping removal described in paragraph 30 below.

28. Site Fencing and Security:

(a) Respondents shall repair or replace the Site fencing to secure the Site, in a manner sufficient to prevent all unauthorized access to the Site. Fencing of the site shall be equivalent to a minimum six-foot high 11-gauge wire chain link perimeter fence supplemented by a minimum of three strands of barbed wire. The fence shall be constructed with 1 5/8-inch posts driven to a depth of at least 2 ½ feet and spaced at no more than ten (10) foot intervals. Corner posts of the fence shall be a minimum of 2 ½ inches in diameter and cemented into a hole at least 24 inches in depth and no less than seven (7) inches in diameter. A tension wire shall be installed at the top and bottom of the chain-link fabric. Gate posts shall be a minimum of 3-inch posts, and shall be cemented as specified above and braced as necessary. The fence shall completely surround the Site, and shall cover, at a minimum, the area depicted on Figure 1, attached to this Order.

(b) Warning signs shall be posted at 100-foot intervals along the fence and on the gate. The warning signs shall advise that the area is hazardous, and direct contact with the Site soils or tank contents could pose a danger to human health.

(c) The gates shall be equipped with keyed locks. Duplicate keys to all gate locks shall be supplied to the Kansas Department of Health and Environment, the Chanute Fire Department, and also to the United States Environmental Protection Agency.

(d) The fence shall be completed no later than fourteen (14) days after the effective date of this Order.

29. Inventory:

(a) The Respondent shall perform an inventory of the tanks and exposed piping at the Site. The inventory shall contain a detailed description of the tanks and their contents, and of exposed piping. The findings of the inventory shall be compiled in the work plan to be submitted to EPA, as described in paragraph 30 below.

30. Tank and Piping Removal:

(a) The Respondent shall submit to EPA, a work plan ("Plan") to: 1) remove the contents of all tanks and exposed piping at the Site, 2) clean all tanks and exposed piping at the Site, and 3) dismantle and dispose of all tanks and exposed piping at the Site. The Plan shall also provide the information gathered during the tank inventory. This information shall be submitted in tabular form, along with a figure showing the location and status (empty or containing liquids) of all tanks.

(b) The Plan shall assume that all tanks at the Site contain flammable or explosive liquids, sludges and/or vapors. Consequently, the Plan shall provide that all tanks shall be filled with an inert gas prior to any tank movement, cleaning, or cutting. No work shall be done on any tank until the lower explosive limit (LEL) is below 20% and the O<sub>2</sub> is less than 3% in the tank. Respondents shall monitor the tanks periodically,

while work is being done, to ensure that the levels do not exceed the values listed above. The Plan shall provide that all persons doing any work related to a tank or its contents shall perform that work only after the tank has been properly vented. The Plan shall require the use of mechanical cutting equipment (e.g., hydraulic shears) to dismantle the tanks--no cutting torches shall be used at the Site.

(c) The Plan shall set out a procedure for (i) removing the contents from all tanks, and (ii) transporting the material to an EPA-approved treatment or disposal facility. The name of all treatment or disposal facilities to be used shall be set out in the Plan.

(d) The Plan shall describe in detail how the tanks shall be cleaned. A curbed concrete pad shall be configured for this purpose. The pad shall be capable of containing and collecting the cleaning fluid(s) used to clean the tanks. The surface of the pad shall be sealed with an epoxy sealer to ensure that the contaminated fluids do not leak from the pad or penetrate the pad's surface. All material removed from the tanks shall be stored in closed and leak-proof containers until shipment of the material off-site.

(e) The Plan shall describe a procedure to drain all fluids from all exposed piping at the Site. The procedure shall ensure that there is as little spillage of the pipe contents as possible. The fluids removed from the piping shall be stored in closed and leak-proof containers until shipment of the material

off-site. The Plan shall describe a procedure for dismantling the piping using mechanical cutting equipment (e.g., hydraulic shears; no cutting torches shall be used) and subsequently cleaning the piping.

(f) The Plan shall require that, after cleaning, all tanks and exposed piping shall be transported off-site for salvage or disposal. The Plan shall also require Respondents to adequately characterize all material removed from the tanks and piping in a manner satisfactory to the disposal facility accepting the material. The Plan shall require Respondents to submit to EPA all manifests or other shipping papers documenting the proper shipment and disposal of all materials collected from the cleaning and dismantling of the tanks and piping.

(g) Respondents shall submit the Plan to EPA no later than thirty (30) days after the effective date of this Order. EPA will review the Plan in accordance with the provisions of Section XIII of this Order. Upon EPA's approval of Respondents' Plan, Respondents shall implement the Plan in accordance with the Plan's provisions.

#### VIII. OFF-SITE SHIPMENTS

31. Respondents shall not ship any oil, hazardous substances, pollutants, contaminants, hazardous waste material or solid waste material derived from the activities required by this Order, from the Site without the prior written consent of EPA.

32. All oil, hazardous substances, pollutants, contaminants, hazardous waste material and solid waste material removed from the Site in connection with the requirements of this Order shall be disposed of or treated in accordance with Section 121(d)(3) of CERCLA, 42 U.S.C. § 9621(d)(3); with the U.S. EPA "Revised Off-Site Policy," OSWER Directive 9834.11, dated November 13, 1987; and with all other applicable Federal, state, and local requirements.

#### IX. NOTICE OF INTENT TO COMPLY

33. Respondents shall provide, within five (5) days after the effective date of this Order, written notice to EPA stating whether they, or any of them, will comply with the terms of this Order. If Respondents, or any of them, do not unequivocally commit to perform the work required by this Order, they shall be deemed to have violated this Order and to have failed or refused to comply with this Order. The absence of a response by EPA to the notice required by this paragraph shall not be deemed to be acceptance of Respondents' assertions.

#### X. PARTIES BOUND

34. This Order shall apply to and be binding upon Respondents, their agents, successors, and assigns. Respondents shall provide a copy of this Order to all contractors, subcontractors, laboratories and consultants retained to conduct any portion of the work performed pursuant to this Order prior to the date such work is initiated.



35. No change in ownership of the Site shall in any way alter Respondents' responsibilities under this Order.

#### XI. PUBLIC NOTICE AND PUBLIC PARTICIPATION

36. Notice of the issuance of this Order has been given to the appropriate authorities with the City of Chanute, Kansas. EPA reserves the right to hold public meetings, formal or informal, to answer questions or address concerns of the public with regard to the work to be performed at the Site. EPA further reserves its right to give such other public notice as it may deem necessary or advisable, concerning the issuance of this Order and the work to be performed hereunder.

#### XII. ADDITIONAL RESPONSE ACTIONS

37. EPA may determine that in addition to the work identified in this Order, additional response activities may be necessary to protect human health, welfare or the environment. If EPA determines that additional response activities are necessary, EPA may require Respondents to submit a work plan for additional response activities. EPA may also require Respondents to modify any plan, design, or other deliverable required by this Order, including any approved modifications. Respondents shall notify EPA of its intent to perform such additional response activities within seven (7) days of receipt of EPA's request for additional response activities.

38. Not later than thirty (30) days after receiving EPA's notice that additional response activities are required pursuant

to this Section, Respondents shall submit a work plan for the response activities to EPA for review and approval. Upon approval by EPA, the work plan shall be incorporated into this Order as a requirement of this Order and shall be an enforceable part of this Order. Upon approval of the work plan by EPA, Respondents shall implement the work plan according to the standards, specifications, and schedules in the approved work plan.

### XIII. EPA REVIEW OF SUBMISSIONS

39. After review of any deliverable, plan, report or other item which is required to be submitted for review and approval pursuant to this Order, EPA may: (1) approve the submission; (2) approve the submission with modifications; (3) disapprove the submission and direct Respondents to re-submit the document after incorporating EPA's comments; or (4) disapprove the submission.

40. In the event of approval or approval with modifications by EPA, Respondents shall proceed to take any action required by the plan, report, or other item, as approved or modified by EPA.

41. Upon receipt of a notice of disapproval or a request for a modification, Respondents shall, within fourteen (14) days or such longer time as specified by EPA in its notice of disapproval or request for modification, correct the deficiencies and resubmit the plan, report, or other item in accordance with EPA's comments. Notwithstanding the notice of disapproval, or approval with modifications, Respondents shall proceed, at the

direction of EPA, to take all actions required by all non-deficient portions of the submission.

42. If any submission is not approved by EPA, Respondents shall be deemed to be in violation of this Order.

#### XIV. ENDANGERMENT AND EMERGENCY RESPONSE

43. In the event of any action or occurrence during the performance of the work required of Respondents in this Order which causes or threatens to cause a release and/or discharge of oil or a solid or hazardous waste or a hazardous constituent, which may present an immediate threat to public health or welfare or the environment, Respondents shall immediately take all appropriate action to prevent, abate, or minimize the threat, and shall immediately notify EPA by telephone, followed by written notification within twenty-four (24) hours of the verbal notification. Respondents shall take such action in consultation with EPA and in accordance with all applicable provisions of this Order. In the event that Respondents fail to take appropriate response action as required by this Section, and EPA takes that action instead, EPA reserves the right to bring an action against Respondents for recovery of all costs incurred by EPA for all response actions taken by EPA hereunder. This requirement is in addition to the requirements set forth in the Emergency Planning and Community Right-to-Know Act, 42 U.S.C. §§ 11001-11050.

44. Nothing in the preceding Paragraph shall be deemed to limit any authority of the United States to take, direct, or order all appropriate action to protect human health and the

environment or to prevent, abate, or minimize an actual or threatened release or discharge of oil or solid or hazardous waste or hazardous constituents on, at, or from the Site.

#### XV. OPPORTUNITY TO CONFER

45. Respondents may, within seven (7) days after the effective date of this Order, request a conference with EPA to discuss this Order.

46. The purpose and scope of the conference shall be limited to issues involving the implementation of the work required by this Order and the extent to which Respondents intend to comply with this Order. This conference shall not constitute an evidentiary hearing, and shall not constitute a proceeding to challenge this Order. Any such conference shall not give Respondents a right to seek review of this Order, or to seek resolution of potential liability, and no official stenographic record of the conference shall be made. Respondents may appear in person or by an attorney or other representative, at any conference held pursuant to Respondents' request hereunder.

47. Requests for a conference shall be made by telephone followed by written confirmation mailed by the following business day to the EPA contact identified in Section XVII.

#### XVI. CONFIDENTIAL BUSINESS INFORMATION

48. Respondents may assert a business confidentiality claim covering all or part of the information submitted pursuant to this Order. The information covered by such a claim will be

disclosed by EPA only to the extent and by the procedures specified in 40 C.F.R. Part 2, Subpart B. Such a claim may be made by placing on or attaching to the information, at the time it is submitted to EPA, a cover sheet, stamped or typed legend or other suitable form of notice employing language such as "trade secret," "proprietary," or "company confidential." Allegedly confidential portions of otherwise non-confidential documents should be clearly identified and may be submitted separately to facilitate identification and handling by EPA. If confidential treatment is sought only until a certain date or occurrence of a certain event, the notice should so state. If no such claim accompanies the information when it is received by EPA, it may be made available to the public without further notice to Respondents.

#### XVII. NOTIFICATION

49. All verbal notices and written documents, including, but not limited to, written notices, reports, plans, and schedules, requested or required to be submitted to EPA pursuant to this Order shall be directed to:

John DeLashmit, P.E.  
RPCB/ARTD  
U.S. Environmental Protection Agency  
Region VII  
726 Minnesota Avenue  
Kansas City, Kansas 66101  
(913) 551-7821

**XVIII. ACCESS TO PROPERTY NOT OWNED BY RESPONDENTS**

50. If (i) the Site (or any portion thereof), or (ii) any area that is to be used for access to the Site, or (iii) property where documents required to be prepared or maintained by this Order are located, or (iv) other property subject to or affected by the clean-up, is owned in whole or in part by parties other than those bound by this Order, Respondents shall obtain, or use its best efforts to obtain, access agreements from the present owner(s) within fifteen (15) days of the effective date of this Order. Such agreements shall provide access for EPA, its contractors and oversight officials, the State of Kansas and its contractors, and Respondents or Respondents' authorized representatives and contractors, and such agreements shall specify that Respondents are not EPA's representative with respect to liability associated with activities undertaken pursuant to this Order. Respondents shall save and hold harmless the United States and its officials, agents, employees, contractors, subcontractors, or representatives for or from any and all claims or causes of action or other costs incurred by the United States including, but not limited to, attorney's fees and other expenses of litigation and settlement arising from or on account of acts or omissions of Respondents, their (or any of their) trustees, officers, directors, employees, agents, contractors, subcontractors, and any persons acting on their behalf or under their control, in carrying out activities

pursuant to this Order. Copies of such agreements shall be provided to EPA prior to Respondents' initiation of field activities. Respondents' best efforts shall include providing reasonable compensation to any owner of property to which access is sought. If access agreements are not obtained within the time referenced above, Respondents shall immediately notify EPA of its failure to obtain access. Subject to the United States' non-reviewable discretion, EPA may use its legal authorities to obtain access for Respondents, may perform those response actions with EPA contractors at the property in question, or may terminate the Order if Respondents cannot obtain access agreements. However, if EPA performs such tasks or activities with contractors and does not terminate the Order, Respondents shall perform all other activities not requiring access to that property. Respondents shall integrate the results of any such tasks undertaken by EPA into its reports and deliverables.

#### XIX. SITE ACCESS AND DATA/DOCUMENT AVAILABILITY

51. Respondents shall allow EPA and its authorized representatives and contractors to enter and freely move about all property at the Site and all other areas subject to or affected by the work under this Order or where documents required to be prepared or maintained by this Order are located, for the purposes of inspecting conditions, activities, the results of activities, records, operating logs, and contracts related to the Site or Respondents and their representatives or contractors pursuant to this Order; reviewing the progress of Respondents in

carrying out the terms of this Order; conducting tests as EPA or its authorized representatives or contractors deem necessary; using a camera, sound recording device or other documentary type equipment; and verifying the data submitted to EPA by Respondents. Respondents shall allow EPA and its authorized representatives to enter the Site, to inspect and copy all records, files, photographs, documents, sampling and monitoring data, and other writings related to work undertaken in carrying out this Order. Nothing herein shall be interpreted as limiting or affecting EPA's right of entry or inspection authority under Federal law.

#### XX. RECORD PRESERVATION

52. Respondents shall, without regard to any document retention policy to the contrary, preserve during the pendency of this Order and for a minimum of ten (10) years after its termination, all records and documents in its possession, custody or control which relate in any way to oil, solid and/or hazardous waste, hazardous constituents and/or hazardous substances generated, stored, treated or disposed of at the Site, the release or discharge, or threatened release or discharge, of oil or solid and/or hazardous waste and/or hazardous substances from the Site or work performed pursuant to this Order. After such ten (10) year period has lapsed, Respondents shall notify EPA at least ninety (90) days prior to the destruction of any such document. Respondents shall, as directed by EPA, either provide



to EPA the documents or copies of such documents or retain them for an additional time period specified by EPA.

#### XXI. OTHER CLAIMS

53. Nothing in this Order shall constitute or be construed as a release from any claim, cause of action or demand at law or in equity against any person, firm, partnership, or corporation for any liability it may have arising out of or relating in any way to the generation, storage, treatment, handling, transportation, release, discharge or disposal of any oil, hazardous constituents, hazardous substances, solid or hazardous wastes, pollutants, or contaminants found at, taken to, or taken from the Site.

#### XXII. OTHER APPLICABLE LAWS

54. All actions required to be taken pursuant to this Order shall be undertaken in accordance with the requirements of all applicable local, state and federal laws and regulations, including, but not limited to, any permitting or licensing requirements.

55. All reports, plans, specifications, and schedules submitted pursuant to this Order are, upon approval by EPA, incorporated into this Order. Any noncompliance with such EPA-approved reports, plans, specifications, or schedules shall be considered a failure to achieve compliance with the requirements of this Order.

#### XXIII. DELAY IN PERFORMANCE

56. Any delay in performance of this Order that, in EPA's judgment, is not properly justified by Respondents under the terms of this Paragraph shall be considered a violation of this Order. Any delay in performance of this Order shall not affect Respondents' obligations to fully perform all requirements of this Order.

57. Respondents shall notify EPA of any delay or anticipated delay in performing any requirement of this Order. Such notification shall be made by telephone to EPA's Project Manager within forty-eight (48) hours after Respondents first knew or should have known that a delay might occur. Respondents shall adopt all reasonable measures to avoid or minimize any such delay. Within five (5) days after notifying EPA by telephone, Respondents shall provide written notification fully describing the nature of the delay, any justification for delay, any reason why Respondents should not be held strictly accountable for failing to comply with any relevant requirements of this Order, the measures planned and taken to minimize the delay, and a schedule for implementing the measures that will be taken to mitigate the effect of the delay. Increased costs or expenses associated with implementation of the activities called for in this Order is not a justification for any delay in performance.

#### XXIV. UNITED STATES NOT LIABLE

58. The United States, by issuance of this Order, assumes no liability for any injuries or damages to persons or property

resulting from acts or omissions by Respondents, or any of their trustees, employees, agents, representatives, successors, assigns, contractors, or consultants in carrying out any action or activity pursuant to this Order. Neither EPA nor the United States may be deemed to be a party to any contract entered into by Respondents or any of their trustees, employees, agents, successors, assigns, contractors, or consultants in carrying out any action or activity pursuant to this Order.

XXV. REIMBURSEMENT OF OVERSIGHT AND MONITORING RESPONSE COSTS

59. Respondents shall reimburse the United States for all costs incurred by the United States in overseeing and monitoring the implementation of the work required under this Order, including, but not limited to: (1) the review or development of plans, reports, and other items pursuant to this Order; (2) the oversight, monitoring, and verification of work performed by Respondents pursuant to this Order; (3) efforts to secure access to any property to which access is required for the performance of the work pursuant to this Order; and (4) review and compilation of cost documentation to support oversight and monitoring cost demands. The United States will send Respondents a demand for payment of such costs which specifies the appropriate account(s) for payment and the date such payments are due. Payment shall be made in the form of a certified check and shall reference the Site. The certified check(s) shall be made

payable to the account(s) designated in the demand and forwarded,  
as appropriate, to:

EPA Hazardous Substance Superfund  
Mellon Bank  
Attn: Superfund Accounting  
EPA Region VII  
(Comptroller Branch)  
P.O. Box 360748M  
Pittsburgh, Pennsylvania 15251

Payment(s) shall be made within thirty (30) days of Respondents' receipt of demand for payment. A copy of the check(s) and any accompanying transmittal letter(s) shall be sent to Ilene M. Munk, Assistant Regional Counsel, U.S. Environmental Protection Agency, Region VII, 726 Minnesota Avenue, Kansas City, Kansas 66101.

60. In the event that the payments required by this Order are not timely made, Respondents shall pay interest on the unpaid balance at the rate established by the Department of the Treasury pursuant to 31 U.S.C. § 3717 and 4 C.F.R. § 102.13. Respondents shall further pay: (1) a handling charge of fifteen dollars (\$15.00), to be assessed at the end of each thirty (30) day period during which a payment due hereunder is late, and (2) a six percent (6%) per annum penalty charge, to be assessed if Respondents have not paid in full within ninety (90) days after the payment is due. Payments made under this Paragraph shall be in addition to such other remedies or sanctions as are available to the United States by virtue of Respondents' failure to make timely payments under this Order.

XXVI. ENFORCEMENT AND RESERVATIONS

61. The United States reserves the right to bring an action against Respondents pursuant to, among other authorities, Section 107 of CERCLA, 42 U.S.C. § 9607, and/or Section 7003 of RCRA, 42 U.S.C. § 6973, for recovery of any response costs incurred by the United States related to this Order and not reimbursed by Respondents. This reservation shall include, but shall not be limited to past costs, direct costs, indirect costs including but not limited to, the costs of oversight and monitoring, as well as accrued interest as provided in Section 107(a) of CERCLA, 42 U.S.C. § 9607.

62. Notwithstanding any other provision of this Order, EPA reserves the right to perform its own studies, complete the work (or any portion of the work) required by this Order, and seek reimbursement from Respondents for its costs, or seek any other appropriate relief.

63. Nothing in this Order shall preclude EPA from taking any additional enforcement actions, including modification of this Order or issuance of additional Orders, and/or additional response actions as EPA may deem necessary, or from requiring Respondents in the future to perform additional activities pursuant to RCRA, or any other applicable law. Respondents shall be liable under Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), and Section 7003 of RCRA, 42 U.S.C. § 6973, for the costs of any such additional actions.

64. Notwithstanding any provision of this Order, the United States hereby reserves all of its information gathering, inspection and all enforcement authorities and rights under RCRA, and any other applicable statutes or regulations. The United States expressly reserves all rights it has to issue additional orders or to take other action it deems necessary or appropriate to address any other areas of the Site which the United States deems a threat to human health or the environment.

65. Respondents shall be subject to civil penalties under Section 7003 of RCRA, 42 U.S.C. § 6973, of not more than \$5,000.00 for each day in which Respondents willfully violate or fail or refuse to comply with this Order, without sufficient cause.

66. Nothing in this Order shall constitute or be construed as a release from any claim, cause of action or demand at law or in equity against any person for any liability arising out of or relating in any way to the Site.

67. If a court issues an order that invalidates any provision of this Order or finds that Respondents have sufficient cause not to comply with one or more provisions of this Order, Respondents shall remain bound to comply with all provisions of this Order not invalidated by such court's order.

#### XXVII. ADMINISTRATIVE RECORD

68. Upon request by EPA, Respondents shall submit to EPA any and all documents (in Respondents' possession, or in the possession of Respondents' agents), related to the selection of

the response action for possible inclusion in the administrative record file.

XXVIII. EFFECTIVE DATE AND COMPUTATION OF TIME

69. This Order shall become effective upon receipt of this Order by Respondents, or any of them. All times for performance of ordered activities shall be calculated from this effective date.

XXIX. TERMINATION

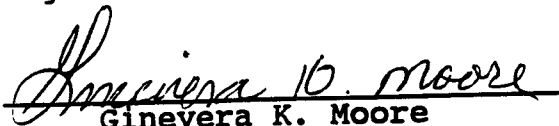
70. The provisions of the Order shall remain in full force and effect until all actions required by this Order, except for the record preservation requirements of Section XXI, have been completed and EPA has notified the Respondents, in writing, that the actions required by this Order have been completed. Respondents shall notify EPA in writing at such time as it believes that all such actions have been completed.

IT IS SO ORDERED:

October 28, 1996



Dennis Grams, P.E.  
Regional Administrator  
U.S. Environmental Protection  
Agency  
Region VII



Ginevera K. Moore  
Assistant Regional Counsel  
U.S. Environmental Protection  
Agency  
Region VII

# MID AMERICA REFINERY

## CONTAMINATED SOIL MAP

MAP 7

### LEGEND

- CULVERT
- BERMED AREA
- BUILDING OR STRUCTURE
- FENCE
- STEEL DRAIN
- STORAGE TANK
- DIRECTION OF FLOW-DITCH
- CONTROL VALVE
- DRAINAGE LINE
- SEWER LINE
- SEWER FORCE MAIN
- TOP OF DIKE
- CONTROLLED DIKE DRAIN
- RAILROAD
- WELL

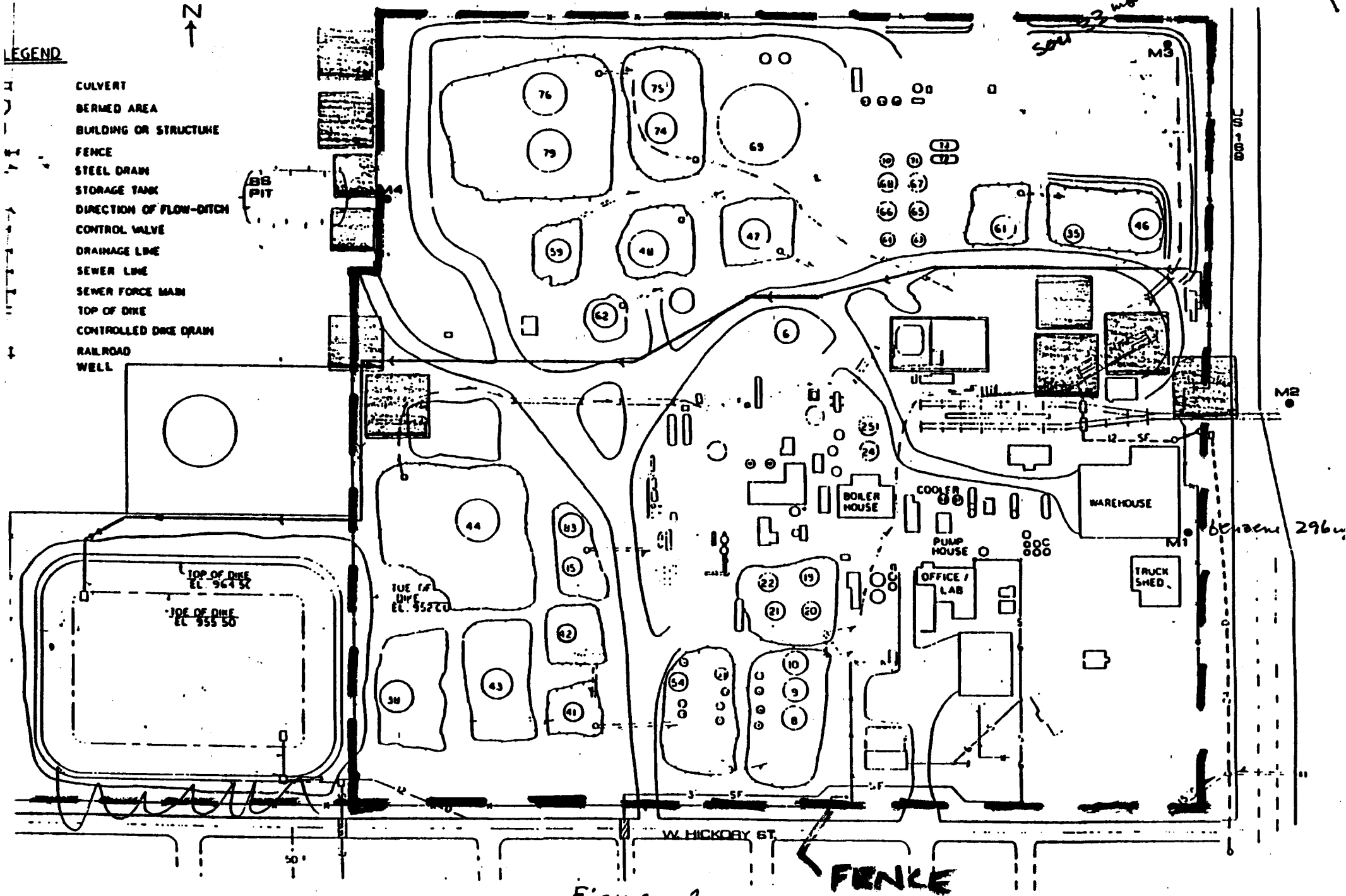


Figure 1